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**From:** CN=Mary Grady/OU=DC/O=USEPA/C=US  
**Sent:** Fri 1/18/2013 2:07:13 PM  
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## AIR & RADIATION LAW NEWS FOR JANUARY 18, 2013

### HIGHLIGHTS

#### EPA to Re-Examine Air Standards for Fracking Operations

EPA says it will reconsider aspects of air pollution standards for natural gas hydraulic fracturing operations and lays out a schedule for further rulemaking in a court filing. EPA asks the U.S. Court of Appeals for the District of Columbia Circuit to put the legal challenges to the standards on hold, saying it will issue a series of proposed and final rules over roughly the next two years addressing issues under reconsideration. EPA did not provide details on what those rules would entail. ... More »

#### New EPA PM Program Encourages Attainment Areas to Reduce Emissions

A voluntary program to assist areas that meet fine particulate matter standards in making further emissions reductions is announced by EPA. The program is intended to help areas avoid being designated as in nonattainment in the future, particularly after EPA begins implementing the 2012 national standards for fine particles. The agency in December 2012 strengthened the annual standard to 12 micrograms per cubic meter of air from the previous standard of 15 micrograms. ... More »

#### Inspector General to Audit EPA List of Alleged Violations Not Addressed

The EPA inspector general will evaluate the agency's public list of alleged violations of environmental laws that have gone unaddressed, according to a memorandum to the Office of Enforcement and Compliance Assurance. The evaluation will seek to determine how EPA uses the Watch List as an enforcement tool and "whether there are opportunities for improvement," the inspector general says in the memorandum. ... More »

#### Cellulosic Ethanol Producers See Benefits From Renewables Standard

The renewable fuel standard has provided the incentives and stability necessary to grow the cellulosic ethanol industry and should not be repealed, ethanol producers say. The first commercial-scale cellulosic ethanol production facilities are expected to begin production this year, the Biotechnology Industry Organization tells reporters. The cellulosic ethanol industry has lagged far behind other renewable fuel producers but an industry official says growth over the last decade "cannot be overstated." ... More »

#### Renewable Energy Grant Program Benefited Foreigners, Republicans Say

An economic stimulus program that provides cash grants for renewable energy projects appears to have "unduly benefitted" foreign companies, according to a report by the Republican staff of the House Energy and Commerce Committee. The report, which examined about \$16 billion in grants distributed through the American Recovery and Reinvestment Act's Section 1603 loan program, found that nearly \$4 billion of those funds went to the U.S. operations of a handful of European or Asian companies. ... More »

### ALSO IN THE NEWS

AIR POLLUTION: Court declines to rehear EPA gold mines case A-17

CLIMATE CHANGE: D.C. Circuit schedules argument in biomass lawsuit A-17

CLIMATE CHANGE: Implementing climate change laws requires cross-party support, long view, officials say A-13

ENERGY: U.S. needs to develop national policies to keep edge in clean energy, report says A-5

## NOTICE

## HOLIDAY SCHEDULE:

This report will not be published on Martin Luther King Day, Monday, Jan. 21.

## Researchers Push EPA Focus On Behavior Studies To Inform Future NAAQS

Air quality researchers are urging EPA to place greater emphasis on studying the public's behavior and how that affects criteria pollutants to inform future national ambient air quality standards (NAAQS), arguing that as standards become tighter and pollution drops such behavior may be a better guide for how to set the NAAQS.

## Environmentalists Urge Administration To Expand Keystone's GHG Review

Environmentalists are urging the Obama administration to expand the scope of the greenhouse gas (GHG) impacts it is reviewing for a decision on whether to permit the Keystone XL tar sands pipeline, saying GHGs from petroleum coke should be included as they would significantly boost the project's GHGs and justify denying the permit.

## Natural Gas Infrastructure Firm Seeks End To EPA Auto Rule Fuel Mandate

A natural gas vehicle (NGV) infrastructure firm is urging EPA to revise its light duty vehicle greenhouse gas rule to eliminate a requirement for NGVs to use twice the amount of natural gas compared to gasoline in order to win credit under the rule, arguing that the mandate will discourage investments in cleaner transport such as NGVs.

## EPA IG Eyes Host Of Key Program Reviews In Plan For 2013 Evaluations

EPA's Inspector General (IG) is planning to launch a host of evaluations into key agency programs as part of its 2013 agenda, which broadly aims to help EPA address management challenges including a lack of workforce planning, limited cybersecurity defenses and inconsistent oversight of delegation of federal programs to states.

## Latest Blogs

## Court Rejects Gold Mine MACT Suit Rehearing

A federal appeals court has denied environmentalists' requests for rehearing of its ruling upholding EPA's 2011 air toxics standard for the gold mining sector, a . . .

## Arguments Set In Biomass GHG Case

The U.S. Court of Appeals for the District of Columbia Circuit has scheduled April 8 oral arguments to hear environmentalists' lawsuit over EPA's decision to . . .

## AIR POLLUTION:

EPA starts voluntary program for reducing soot emissions

Jeremy P. Jacobs, E&E reporter

Published: Thursday, January 17, 2013

U.S. EPA today launched a voluntary program aimed at helping communities meet new air emissions limits for fine particles, or soot.

With the program, PM Advance, EPA plans to work with states, tribes and local governments to implement programs to cut back on fine particles, or PM 2.5, which come from auto tailpipes, power plants, drilling operations and boilers.

The program, EPA said, may be used by communities that are currently in attainment for the 1997 standard of 15 micrograms per cubic meter averaged over a year and are looking for ways to meet the new standard of 12 micrograms finalized in December (Greenwire, Dec. 14, 2012).

One such program, EPA said, could be a school bus retrofit program. In such a case, EPA would provide technical advice and other support.

Fine particles are particularly dangerous, public advocates have argued, because they can get lodged deep within the lungs, leading to myriad harmful health effects. EPA estimates that the new 12-microgram standard will provide health benefits worth \$4 billion to \$9.1 billion per year.

For every dollar invested in pollution reduction, EPA said, the country will reap returns of \$12 to \$171 in health benefits.

It's unclear, however, how many communities will opt to use the new voluntary program. According to EPA's analysis, more than 90 percent of the country would be able to comply with the 12-microgram standard without any additional actions because of

various EPA air rules taking effect. EPA identified about 65 counties that will violate the new standard if no additional action is taken.

#### CLIMATE:

Groups press Obama to act on warming in his second term

Jean Chemnick, E&E reporter

Published: Thursday, January 17, 2013

Two more advocacy groups today added their voices to the list of those urging President Obama to step up efforts to combat climate change in his second term.

Scholars at the left-leaning Center for American Progress released a 10-part environmental wish list ahead of Obama's second inauguration Monday, aimed at ensuring that the United States meets its international commitment to cut greenhouse gas emissions by 17 percent compared with 2005 levels by 2020.

Clean Air Act rules for power plants, refineries and other sources topped the list. U.S. EPA proposed a carbon dioxide rule for new power plants last year, which is expected to be finalized in the next few months. But a rule for existing power plants is running behind schedule, and there is little information about what it might look like.

Senior fellow Daniel Weiss and Jackie Weidman, who penned the CAP list, pointed to a recent proposal by the Natural Resources Defense Council that would create differentiated standards for power plants in different states. They said it would help significantly close the gap between current U.S. emissions and the 2020 target.

The two also urged adoption of a price on carbon, perhaps in the form of a progressively designed carbon tax that would rebate some revenue to low- and middle-income consumers.

Weiss and Weidman also urged the White House to reject the proposed Keystone XL pipeline, which would carry fuel from Alberta oil sands to the Gulf Coast. The two said the pipeline would counteract the vehicle fuel economy standards the administration often touts as its principal environmental achievement of the first term.

"President Obama has already approved several unprecedented measures to reduce carbon pollution from vehicles," Weiss and Weidman wrote. "This progress, however, could be undone by the approval of the Keystone XL pipeline."

While Obama will have the final say on whether the controversial project goes forward, the State Department will first sign off on a supplemental environmental impact statement. Weiss said in a recent interview that the nomination of Sen. John Kerry (D-Mass.), a leading Senate voice on climate change, to replace Hillary Rodham Clinton as secretary of State makes it less likely that Keystone will get the nod from State.

Also today, a coalition of 21 groups with Latino membership said in an open letter to the president that climate and air quality concerns are of particular importance to that politically sought-after demographic.

"This election made it clear that Latinos want a strong economy, immigration reform and a bright and healthy future for our children," the coalition wrote.

Latinos are at particular risk for increased smog and other conditions that would be worsened by climate change, the letter said, because they tend to live in areas with a higher concentration of pollution.

"Your Administration's stronger standards for automobile fuel efficiency, limits on mercury from power plants, and carbon standards for new power plants, will benefit all Americans, particularly Latinos, one in two of whom live in counties that violate air pollution standards," they wrote.

#### AIR POLLUTION:

Company fined for selling device that nixes trucks' emission controls

Lawrence Hurley, E&E reporter

Published: Thursday, January 17, 2013

The Utah manufacturer of a product that disabled diesel pickup trucks' emission controls will pay a \$500,000 fine to settle claims that it violated the Clean Air Act.

The device made by Ogden-based Edge Products LLC allowed truck owners to remove controls that prevented emissions of excess particulate matter and let trucks spew black smoke, the Obama administration said.

The company sold more than 9,000 of the devices, leading to an estimated 158 tons of particulate matter emissions, according to the Justice Department. Edge stopped selling the product in mid-2011.

As part of today's settlement, Edge will offer to buy back the product and spend \$157,600 on an emission-mitigation project.

Jared Blumenfeld, U.S. EPA's regional administrator for the Pacific Southwest, said in a statement that "allowing black smoke to billow conspicuously from the tailpipes of diesel pickup trucks is a practice that directly harms public health."

#### CLIMATE:

New reports show Keystone XL a likely driver of future warming

Jean Chemnick, E&E reporter

Published: Thursday, January 17, 2013

International environmental groups today released two reports detailing the likely climate costs of the proposed Keystone XL oil pipeline in a last-minute attempt to persuade the Obama administration not to approve it.

Their pitch: Building the proposed pipeline to carry 830,000 barrels of Canadian oil sands oil a day to U.S. refineries will ensure the expansion of some of the highest-carbon fuels now in use while delaying a switch to more climate-friendly alternatives.

"This pipeline is not about a pipeline," Danielle Droitsch, Canada Project director for the Natural Resources Defense Council, said at an unveiling of the reports today at the National Press Club in Washington, D.C. "This is about tar sands development. This is about climate."

A paper released by Oil Change International, an anti-fossil-fuels activist group based in Washington, found that the State Department in its assessment of the proposed pipeline had not considered carbon emissions from U.S. refineries burning petroleum coke from oil sands. The agency had thereby underestimated the greenhouse gas effects of the fuel that would be transported through the pipeline by about 13 percent, the study concludes.

The Canada-based Pembina Institute's report looked at the effect the pipeline would have on the expansion of oil sands development in Canada. The industry already produces 1.8 million barrels a day but is set to produce upward of 5 million a day by 2030, Nathan Lemphers of Pembina told reporters at today's event.

The reports were touted by advocates and lawmakers who hope President Obama will reject a revised proposal for Keystone XL in the next few months. Rep. Henry Waxman (D-Calif.) said in a statement that the reports showed Keystone "is the key that will unlock the tar sands."

"If the pipeline is approved, the world will face millions more tons of carbon pollution each year for decades to come," said Waxman, who serves as top Democrat on the House Energy and Commerce Committee. "After Hurricane Sandy, devastating drought, unprecedented wildfires, and the warmest year on record in the United States, we know that climate change is happening now, we have to fight it now, and we must say no to this pollution pipeline now."

Droitsch said the pipeline decision has become a "primary focus" of environmental and climate change activists.

"The pressure is being felt by the president," she said.

Droitsch noted that the Obama administration had committed to consider all the environmental effects of building the pipeline, and said she therefore expects that the supplemental environmental impact statement being prepared by the State Department will take into account the effects not only of transporting the fuel, but of encouraging its production.

"We don't view this as an inevitable approval," she said, adding that whatever the president decides on Keystone XL, it will go down as part of his legacy on climate change.

Speakers agreed that if the pipeline goes forward, it will serve as a powerful market signal encouraging the oil sands industry to expand. That, in turn, would make it very difficult for the world to keep its postindustrial temperature rise to under 2 degrees Celsius, the threshold at which scientists say the worst effects of climate change can still be avoided.

This is especially true, they said, given the current political situation in Canada, where the Conservative government is allied with the oil sands industry and has taken steps to dismantle environmental rules it views as onerous.

"Because Canada does not have a credible plan for responsibly developing the oil sands, including reducing emissions so Canada can meet its climate commitments, the pipeline should not go ahead," said Lemphers. He touted the need for Canada to promulgate a new greenhouse gas rule for oil and gas production, or to price carbon emissions more broadly.

#### NUCLEAR WASTE:

Top Hanford engineer advised against restarting plant -- memo

Published: Thursday, January 17, 2013

The Hanford nuclear reservation's waste treatment plant in Washington state should stop work because of quality concerns, the plant's engineering director said in an internal memo before he left his job.

Work should halt "to avoid further nuclear safety compromises and substantial rework," said leading engineering department official Gary Brunson in a December memo obtained by watchdog group Hanford Challenge. Brunson, who left his position this month, couldn't be reached for comment.

The document has surfaced a day after DOE said workers could safely restart construction at the nuclear waste cleanup plant. The construction at the plant, called the nation's most contaminated nuclear site, would begin after it was put on hold for seven months (Greenwire, Jan. 16).

In the memo, Brunson questioned the quality of the plant, which would process radioactive waste stored in 177 tanks. He urged an independent review and that "all activities affecting engineering design, nuclear safety, and construction and installation of all structures, systems and components be stopped."

DOE said in a statement, "The department will continue, and as appropriate, ramp up construction work not impacted by the remaining technical issues" (Scott Learn, Portland Oregonian, Jan. 16). -- VWW

#### DOE:

Plan to sell scrap metal from nuclear sites worries critics

Published: Thursday, January 17, 2013

Critics are concerned about an Energy Department waste-reduction plan to sell tons of scrap metal from government nuclear sites.

The proposal adheres to DOE's policy of "reusing materials whenever possible," the department said in a document released last month. Tens of millions of tons of metal is recycled each year, the department said. And the 14,000 tons of metal from nuclear

sites that could be sold makes up a fraction of that. While the metal would come from "radiological areas," the dose the public would be exposed to would be low, it said.

The department estimates the sale could bring in \$10 million to \$40 million a year for the agency.

But environmentalists and trade groups have expressed worries.

"We are concerned about what could happen in the marketplace if you have to worry about radioactive material possibly being in your eyeglass frames," said Thomas Danjczek, president of the Steel Manufacturers Association, a trade group whose members use recycled metals. "Why is the government trying to hurt the image of American products?"

Rep. Ed Markey (D-Mass.) called the plan "unwise" and suggested in a letter to Energy Secretary Steven Chu that it "should be immediately abandoned."

The government has recycled metal from its nuclear sites in the past. Shipments were suspended following a 2000 report from DOE's inspector general that found testing procedures in place were inadequate. The proposed plan indicates that procedures have since improved (John R. Emshwiller, Wall Street Journal, Jan. 16). -- WW

#### AIR POLLUTION:

Sulfur-slashing standards for gasoline 'urgently needed,' groups tell White House

Jeremy P. Jacobs, E&E reporter

Published: Thursday, January 17, 2013

Public health advocates yesterday sought to ramp up pressure on the White House to issue a proposal that would cut the amount of sulfur in gasoline and consequently result in less harmful tailpipe air emissions.

The coalition, including the American Lung Association and American Heart Association, said the so-called Tier 3 standards are "urgently needed" and asked the White House to finalize them by the end of the year.

"Nearly 159 million Americans still live in areas where the air is too dangerous to breathe," the advocates wrote in a letter to President Obama. "Cleaner gasoline will benefit their health immediately."

EPA is considering a proposal that would cut the limit of sulfur allowed in gasoline from 30 parts per million to 10 ppm, bringing the United States in line with several European countries and California, which has already set more stringent standards.

The letter marks the second time in two weeks that proponents of the proposal have called on the White House to issue it (Greenwire, Jan. 10). EPA is widely believed to have the regulations written, but the rules stalled last year in the face of refining-sector opposition.

The sector argues that the regulations will lead to gas price increases and could force some refineries to shutter. Industry groups met with Obama confidante and senior adviser Valerie Jarrett last March, and the Tier 3 proposal was discussed (EnergyWire, Oct. 2, 2012).

Advocates said in the letter that the standards are a cost-effective way to reduce emissions of harmful volatile organic compounds and nitrogen oxides.

"The National Association of Clean Air Agencies estimates that by lowering the sulfur content in gasoline, the nation could immediately reduce the amount of air pollution equal to removing 33 million cars and light trucks from our roads," they wrote.

"Reducing the sulfur in gasoline will build on the strong foundation of your efforts to increase fuel efficiency and cut carbon pollution in half by 2025."

EPA has said the cost of the regulations would be only about a penny per gallon. The agency also indicated on its 2013 agenda that it plans to release the proposal by April, though those dates often slip.

Some agency observers have suggested that when Obama chooses a successor to outgoing EPA Administrator Lisa Jackson could play a role in the timing of the proposal. Because of the significance of the regulations, the White House may want to issue them after the Senate confirms a new administrator.

It is unclear when Obama will nominate Jackson's successor. Current deputy Bob Perciasepe will handle the job in an acting role when Jackson leaves next month after the State of the Union address. Perciasepe is seen as a possibility to fill the job permanently, as are a host of other candidates, including former Washington Gov. Christine Gregoire (D) (Greenwire, Jan. 8).

In addition to the Lung and Heart associations, the American Public Health Association, the American Thoracic Society, the Asthma and Allergy Foundation of America, Health Care Without Harm, the National Association of County and City Health Officials, and the Trust for America's Health signed onto the letter.

They said the regulations can't wait.

"Americans have the right to breathe clean and healthy air," they wrote. "In our work to improve the health of our patients and the public, we know first-hand that the air too many Americans breathe puts their health and their lives at risk."

[Click here for the letter.](#)

#### BIOFUELS:

Marginal farmland a potential boon for ethanol crops, CO2 reduction -- study

Amanda Peterka, E&E reporter

Published: Thursday, January 17, 2013

Marginal Midwestern farmland -- tracts not used for food crops -- can produce enough biofuels to reduce the amount of carbon dioxide spewed annually by about 10 million mid-sized cars, according to new research.

While the notion of using marginal lands for biofuel production is several years old, the study published in the current issue of *Nature* is the first to quantify the biofuel potential and possible emission benefits of marginal lands. The study used 20 years of data from 10 states.

"This research shows that these lands could make a major contribution to transportation energy needs, while providing a substantial climate and -- if managed properly -- conservation benefits," said Phil Robertson, a Michigan State University professor of ecosystem science and a co-author of the study, in a statement.

Researchers compared six types of traditional and advanced biofuel systems: conventional and no-till corn-soybean-wheat rotation, alfalfa, poplar, marginal lands that have been abandoned and left to revegetate, and abandoned fields that have been helped along with fertilizer.

They measured several factors -- including greenhouse gas emissions, soil-carbon stocks and yields -- using data from the National Science Foundation's Kellogg Biological Station Long-Term Ecological Research site at Michigan State.

The results showed all systems were net sinks of greenhouse gases when the emissions avoided from producing fossil fuel were taken into account.

Grasses and other vegetation in both the unfertilized and fertilized abandoned fields -- marginal lands where no food crops were grown -- absorbed substantially more CO<sub>2</sub> than the other systems.

Using marginal lands for biofuel production, the study says, would not interfere with food-cropping systems or have any indirect land-use effects.

Measuring productivity of different systems and using models to map the Midwest, researchers found, under a conservative estimate, that marginal lands could provide enough biomass to produce 215 gallons of cellulosic ethanol per acre or 5.5 billion gallons of cellulosic ethanol a year. The numbers are based on a scenario in which biomass is collected from an 80-kilometer radius around potential biorefineries.

Those levels equal about 25 percent of the 2022 target for cellulosic biofuel production under the federal renewable fuel standard and, compared to using fossil fuels, reduce carbon dioxide emissions by the equivalent of taking 10 million medium-sized cars off the road, according to an accompanying critique of the study by German researcher Klaus Butterbach-Bahl and Kenyan researcher Ralf Kiese.

"Because it is based on long-term data, this is the first convincing analysis of the impact of biofuel-production systems on global warming," Butterbach-Bahl and Kiese wrote.

Researchers from the Pacific Northwest National Laboratory and the University of Maryland also participated in the study. The research was funded by NSF, the Great Lakes Bioenergy Research Center and MSU AgBioResearch.

ClimateWire -- Fri., January 18, 2013 -- Read the full edition

1. FOSSIL FUELS: Whether by river or rail, coal exporters hit local opposition in the Northwest

RAINIER, Ore. -- The grainy photograph hanging on the wall of the Ol' Pastime Tavern here recalls a time when lumber still defined the economy of the Northwest. It was taken in 1924. The tavern -- at that time still a hotel and saloon -- is perched in the foreground, flanked by smaller clapboard buildings on either side. Railroad tracks run down the main street amid piles of logs waiting for the next train. Nine decades later, those tracks still cut through the heart of town, passing the Ol' Pastime and a dozen other Rainier businesses as they skirt the southern bank of the Columbia River. Soon, they could put Rainier squarely in the path of some 30 million annual tons of coal, mined from Montana and Wyoming and bound for the Pacific and Asia.

2. PEOPLE: Pershing to leave State Department for DOE

Deputy Special Envoy for Climate Change Jonathan Pershing, who helped lead the United States at the U.N. global warming talks for the past four years, will step down. In an email to colleagues last night, obtained by ClimateWire, Pershing announced he will be the Department of Energy's new deputy assistant secretary for climate.

TODAY'S STORIES

3. ECONOMICS: U.S. efficiency spending projected to double, offset most demand increases

4. SCIENCE: Warming Arctic could spell doom for a community of species -- study

5. GRID: Calif. reaches out to neighbors in push for green power

6. TRANSPORTATION: Cities spearhead plan for sustainable new growth models

7. HEALTH: Scientists use computers to predict spread of tropical diseases

8. KEYSTONE XL: Dueling reports outline pipeline benefits, dangers

9. SCIENCE: Drought conditions could worsen in Midwest -- NOAA

10. NATIONS: E.U. needs German support to raise price of carbon emissions allowances, Hedegaard says

11. NATIONS: Big bucks needed for clean energy, says French president

12. STATES: Minn. legislators get a crash course in climate

EnergyWire -- Fri., January 18, 2013 -- Read the full edition

1. LNG: DOE leadership question adds to unknowns on exports

A messaging war is heating up as stakeholder comments roll into the Energy Department around proposals to expand natural gas exports, but one concern with the process is not making it into writing: How will a potential leadership change at DOE affect the

results?

THIS MORNING'S STORIES

2. HYDRAULIC FRACTURING: House Democrats push EPA to move faster on Pavillion
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4. BUSINESS: Rosneft's rise to largest crude producer paced M&A action in 2012
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7. INTERIOR: Salazar, oil industry found 'common ground'
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10. MARKETS: Price gap plagues Canadian oil market

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